

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

EXPLORICA, INC.

Plaintiffs,

v.

Civil Action No. 09-11719-RGS

ELDERHOSTEL, INC.  
d/b/a EXPLORITAS,

Defendants.

**ELDERHOSTEL'S MOTION TO DISMISS  
EXPLORICA'S STATE DILUTION CLAIM**

Defendant Elderhostel moves this court to dismiss Explorica's state dilution claim (Amended Complaint, D.I. 24, Count V) under Mass. Gen. Laws ch. 110H § 13.

A federal registration of a trademark is a complete bar to state dilution claims under 15 U.S.C. 1125(c)(6)(A). That statute states:

(6) Ownership of valid registration a complete bar to action

The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark, that—

(A)

- (i) is brought by another person under the common law or a statute of a State; and
- (ii) seeks to prevent dilution by blurring or dilution by tarnishment

Elderhostel obtained Federal Registration 3,729,057 for its EXPLORITAS® mark on December 22, 2009. (Joint Exhibit 94).

Because § 1125(c)(6)(A) is a complete bar to state dilution claims, this Court should dismiss Explorica's state dilution claim under Mass. Gen. Laws. ch. 110H § 13.

Respectfully submitted,

ELDERHOSTEL, INC.

By its attorneys,

Dated: February 22, 2010

/s/ Michael A. Albert

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**CERTIFICATE OF SERVICE**

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Michael A. Albert